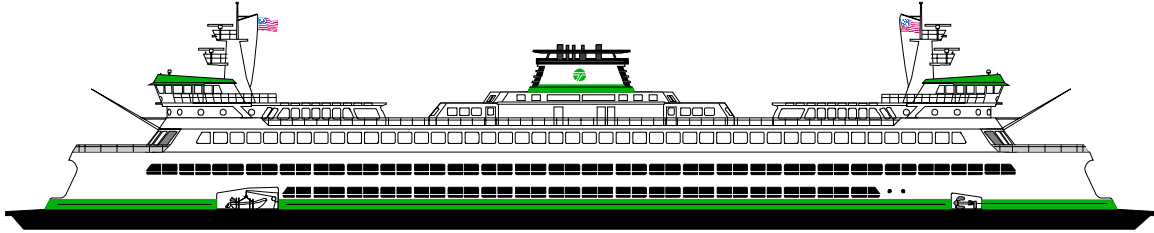


PART 10

CONTRACTS



WASHINGTON STATE FERRIES

WASHINGTON STATE DEPARTMENT OF TRANSPORTATION

FAST FOOD CONCESSION CONTRACT

JANUARY 2004

WASHINGTON STATE FERRIES

FAST FOOD CONCESSION CONTRACT

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WASHINGTON STATE FERRIES
FAST FOOD CONCESSION CONTRACT

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WASHINGTON STATE FERRIES
FAST FOOD CONCESSION CONTRACT

1 **THIS CONTRACT** is made and entered into this ____ day of _____,
2 2003, between **WASHINGTON STATE FERRIES**, a division of the Washington State
3 Department of Transportation (hereinafter called "**WSF**") and
4 _____, an independent contractor (hereinafter
5 called the "**CONCESSIONAIRE**").

6
7 **WITNESS THAT:**

8
9 **WHEREAS**, **WSF** owns and operates the largest ferry system in the United States,
10 including twenty-four (24) auto ferries and five (5) passenger-only ferries serving twenty
11 (20) terminals in Puget Sound, Washington and Sidney, British Columbia, all as an integral
12 part of the Washington State highway system; and

13
14 **WHEREAS**, **WSF** desires to contract with a qualified **CONCESSIONAIRE** to
15 provide fast food service at: (i) **WSF's** Seattle Ferry Terminal at Colman Dock – Pier 52 in
16 downtown Seattle, Washington; and (ii) other **WSF** ferry terminals subject to space
17 availability and agreement between the parties; and

18
19 **WHEREAS**, pursuant to authorization in Revised Code of Washington (RCW)
20 47.60.140 and 47.56.030, **WSF** sought competitive proposals for such concession service
21 and, following evaluation of _____ (____) proposals, selected the **CONCESSIONAIRE'S**
22 Proposal as the one most advantageous to **WSF**; and

23
24 **WHEREAS**, the **CONCESSIONAIRE** is duly authorized and qualified to provide
25 the desired concession service and has signified its capability and willingness to provide such
26 service as an independent contractor in accordance with (i) the terms of this Contract; (ii) the
27 **CONCESSIONAIRE'S** Financial Proposal, by this reference incorporated herein as Exhibit
28 "A"; (iii) the **CONCESSIONAIRE'S** Concept / Service Proposal, by this reference
29 incorporated herein as Exhibit "B"; and (iv) **WSF's** project Request For Proposals, including

1 all Addenda thereto (hereinafter called "RFP") by this reference incorporated herein as
2 Exhibit "C".

3
4 **NOW, THEREFORE**, in consideration of the terms, conditions, covenants, and
5 performances contained herein or attached, incorporated and made a part hereof, the parties
6 hereto agree as follows:

7
8
9 **I.**
10 **DESCRIPTION OF PREMISES**

11
12 A. **WSF** hereby allocates to the **CONCESSIONAIRE**: (i) certain concession space at
13 **WSF**-approved locations at ferry terminals owned (or leased) and operated by **WSF**,
14 all as more specifically described below. The amount of concession space allocated
15 to the **CONCESSIONAIRE** will vary from location to location depending on
16 available space and market conditions. All such concession space is subject to pre-
17 approval in writing by **WSF**. The actual concession spaces approved by **WSF** at all
18 such **WSF** locations, both individually and collectively, are hereinafter referred to as
19 the "Concession Premises". For diagrams and drawings of the Concession Premises,
20 please see RFP Volume II, Exhibits.

21
22 1. **Colman Dock**

23
24 **Existing Fast Food Restaurant**

- 25
26
27
28
29
30
- Fronts on Alaskan Way at the foot of Marion Street
 - Accessible from both the street and vehicle holding areas
 - Approximately 5,700 square feet
 - 4,000 square feet interior restaurant space
 - 1,700 square feet outdoor patio space

31 **Other**

- 32
33
34
- No on-dock parking is available
 - No on-site office space is available

1
2 The current fast food Concession Premises on the lower level of the Colman
3 Dock – Pier 52 Ferry Terminal in downtown Seattle, King County,
4 Washington is more formally described as follows:
5

6 LOWER RENTAL AREA
7

8 That part of Block 198 of Seattle Tidelands referred to as the "Lower Rental
9 Area" of the Washington State Ferry Terminal, Pier 52, Seattle, Washington,
10 consisting of approximately 4,000 square feet, more or less, of floor space
11 located at the street (Alaskan Way) level of the Terminal; the specific details
12 concerning all of which are to be found in those maps referred to as Contract
13 T-7486 now of record and on file in the Office of the Secretary of
14 Transportation at Olympia, Washington, and bearing date of approval of
15 March 2, 1964; and further shown in red on the diagram attached hereto and
16 by this reference incorporated herein as Exhibit "A".
17

18 ADDITIONAL AREA
19

20 An additional area (currently an exterior restaurant patio) consisting of
21 approximately 1,700 square feet immediately north of the "Lower Rental
22 Area", as shown in red on Exhibit "A" herein.
23

24 2. **Other Terminals**
25

26 The potential for future Concession Premises at other **WSF** Ferry Terminals
27 shall be as provided in the RFP Specifications:
28

- 29 B. Upon the **CONCESSIONAIRE'S** request, **WSF** shall provide any necessary
30 clarification regarding components of the terminal Concession Premises.
31
32 C. **WSF** may, in its sole discretion, allocate and authorize (i) an expansion of the
33 Concession Premises at any of its terminals; subject to space availability and approval
34 in writing by **WSF**.
35

1
2 D. The **CONCESSIONAIRE** accepts the Concession Premises in their present
3 condition, after removal of trade fixtures and other personal property of **WSF'S**
4 predecessor food service concessionaire (at the Colman Dock Ferry Terminal). The
5 condition of the Concession Premises shall be verified by the
6 **CONCESSIONAIRE'S** inspection of the Premises prior to the commencement of
7 this Contract.
8
9

10 **II.**
11 **USE OF PREMISES**
12

13 A. **WSF** authorized the **CONCESSIONAIRE** to use the terminal Concession Premises
14 for fast food service for **WSF** customers. Such use is detailed in the RFP
15 Specifications, but generally includes foods which can be prepared and served
16 quickly and are suitable to eat on the premises or for take out. Possible uses include
17 but are not limited to:

- 18
19 • Quick serve hamburgers, seafood, chicken, pizza, Mexican food, Asian food,
20 breakfast items, sandwiches, salads and hot and cold beverages (excluding
21 espresso).
22

23 New fast food Concession Premises developed upon agreement with **WSF** shall be
24 used solely for purposes consistent with the fast food concept.
25

26 B. **WSF** may, in its sole discretion, authorize the **CONCESSIONAIRE** to establish
27 other directly-related concession services, all subject to space availability and
28 approval in writing by **WSF**. **WSF** may also request that the **CONCESSIONAIRE**
29 provide such additional concession services, subject to the provisions in Article V.C
30 herein.
31

32 C. The Concession Premises shall be used only for providing the concession services
33 authorized herein. Other commercial or non-commercial activities, or use and
34 occupancy by other parties of the Concession Premises, are prohibited unless
35 approved in advance and in writing by **WSF**.
36
37

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III.
TERM

5 A. This Contract shall be in force for a term of approximately ten (10) years,
6 commencing at 12:01 a.m. on January 1, 2004, and expiring at 12:00 a.m. (midnight)
7 on January 3, 2014.

8
9 B. **Holding Over**

10 If **WSF** desires to maintain the concession services described herein at **WSF**
11 locations following expiration of this Contract, **WSF** shall make a good faith effort to
12 seek competitive proposals, and award and execute a successor Contract prior to the
13 expiration of this Contract. However, if **WSF** fails to timely execute such a successor
14 contract and the **CONCESSIONAIRE** continues in performance of the services
15 described herein with **WSF's** consent, the resulting tenancy shall be on a month-to-
16 month basis unless the parties agree otherwise in writing. Such month-to-month
17 tenancy shall be governed by the Contract terms and conditions in effect immediately
18 prior to such expiration, unless the parties agree otherwise in writing.
19
20

21
22
23

IV.
INDEPENDENT CONTRACTOR

24 A. The parties declare that the **CONCESSIONAIRE** and its employees, while
25 performing this Contract, are acting as independent contractors and not in any manner
26 as officers or employees of **WSF**. Any and all claims that might arise under any
27 Workmen's Compensation Act, Jones Act or Longshore and Harbor Worker's Act on
28 behalf of such employees or other persons under the **CONCESSIONAIRE'S**
29 direction or control, while performing any of the work or services described herein,
30 shall be the sole obligation and responsibility of the **CONCESSIONAIRE**.

31
32 B. As an independent contractor, the **CONCESSIONAIRE** shall coordinate with **WSF**
33 on issues affecting **WSF** operations and maintenance, as specified herein and in the
34 RFP, such as, but not limited to: transitioning from the former concessionaire,
35 scheduling issues regarding customer service, construction or remodeling, financial
36 and sales reporting, and product storage. While agreeing to coordinate with **WSF**, the

1 **CONCESSIONAIRE** shall remain solely responsible for its employee relations as
2 well as its own labor relations, as required by law. Therefore, this agreement to
3 coordinate efforts shall not create a joint-employer relationship between **WSF** and the
4 **CONCESSIONAIRE**, or any subcontractor, franchisee, or licensee operating under
5 this Contract.

6

7

8

V.

9

EXCLUSIVE FRANCHISE

10

11 A. Subject to the provisions in Paragraph C below, the **CONCESSIONAIRE** shall have
12 the exclusive right to provide: (i) the food and beverage service defined herein on the
13 terminal Concession Premises, as follows:

14

15 1. Rights to operate a Fast Food Restaurant at the current site of the McDonald's
16 Restaurant on the lower level of **WSF'S** Seattle Ferry Terminal at Colman
17 Dock – Pier 52.

18

19 2. Rights to develop and operate new Fast Food concepts and facilities at other
20 **WSF** terminals subject to space availability and agreement by **WSF**.

21

22 3. Rights to develop sub-contract relationships with local and seasonal
23 businesses to assist in offering Fast Food concepts and services subject to
24 agreement by **WSF**.

25

26 B. **WSF** encourages the **CONCESSIONAIRE** to:

27

28 1. Develop Fast Food offerings that provide a balance of local and national
29 brands, featuring local businesses, brands and products whenever possible;
30 and

31

32 2. Engage, sub-contract, franchise or license to / from other businesses to
33 provide a variety of Fast Food services, concepts and local involvement under
34 this Contract.

35

1 C. If **WSF** requests, in writing, that the **CONCESSIONAIRE** provide certain additional
2 concession services pursuant to this Contract, whether or not specifically described
3 herein, and if the **CONCESSIONAIRE** fails to commence such concession services
4 within thirty (30) calendar days after receipt of the written request, **WSF** may
5 immediately terminate the **CONCESSIONAIRE'S** franchise rights, if any, for the
6 requested, additional concession services only. In such event, **WSF** may itself
7 provide or contract for the provision of those additional concession services.

8
9
10 **VI.**
11 **SCOPE OF SERVICES**
12

13 A. The **CONCESSIONAIRE** shall:
14

- 15 1. Provide food and beverage service (as authorized herein) on the Concession
16 Premises in accordance with the **CONCESSIONAIRE'S** Proposal and the
17 RFP. Deviation from the Proposal or the RFP, in any manner, shall be
18 permitted only with the express consent of the authorized **WSF** representative.
19
- 20 2. Obtain **WSF'S** approval of the concession facilities' design, size,
21 improvements (including equipment, fixtures and furnishings) prior to any
22 modification / renovation of the Concession Premises, and be solely
23 responsible for all damages, direct and consequential, resulting from the
24 **CONCESSIONAIRE'S** failure to obtain such approval.
25
- 26 3. Obtain **WSF'S** approval for the **CONCESSIONAIRE'S** proposed food and
27 beverage menu, and customer prices and product quality, for all concession
28 services, prior to commencement of operations under this Contract. Food and
29 beverage products must be first quality and meet all applicable Health
30 Department regulations.
31
- 32 4. Provide exceptional customer service combined with the goal of achieving
33 business success. The **CONCESSIONAIRE** shall tailor concession concepts,
34 capital investments, and staff levels to meet varying needs and hours of
35 service.
36

- 1 5. Accept credit card and debit card transactions.
- 2
- 3 6. Adhere to **WSF's** street pricing requirement. The **CONCESSIONAIRE** and
- 4 **WSF** will select three (3) sites providing comparable products and services.
- 5 After the initial pricing approval, **WSF** may review such products, services,
- 6 prices, quality, etc. then in effect and if they do not fall within the range of the
- 7 comparable facilities, **WSF** will require adjustments.
- 8
- 9 7. Ensure that deliveries to and from the Concession Premises are done in a
- 10 manner and at times that will minimize interference with **WSF** vessel and
- 11 terminal operations. The **CONCESSIONAIRE** shall ensure that delivery
- 12 vehicles do not park at terminals longer than the actual time required for pick-
- 13 up and delivery.
- 14
- 15 8. Comply with: (i) all federal, state and local statutes, ordinances, regulations
- 16 and rules pertaining to the **CONCESSIONAIRE'S** operations hereunder,
- 17 including but not limited to applicable Washington State Department of
- 18 Health rules, regulations and standards; and (ii) all proper orders of authorized
- 19 federal, state and/or municipal officers.
- 20
- 21 9. Coordinate with **WSF'S** authorized representative: (i) concession operational
- 22 requirements; (ii) Contract compliance; and (iii) other administrative
- 23 requirements, as needed, to ensure smooth operation of the concession
- 24 services. Such coordination is important to avoid any potential conflict with
- 25 **WSF** terminal and vessel operations or with **WSF** customers.
- 26
- 27

VII.
HOURS OF OPERATION AND MARKETING

A. Hours of Operation

The **CONCESSIONAIRE** shall provide terminal food and beverage service during the hours and at those service levels specified in the **CONCESSIONAIRE'S** Proposal and approved by **WSF**; and thereafter specified in seasonal operating schedules to be approved in advance by **WSF**, as detailed below. The **CONCESSIONAIRE** may not adjust the approved service hours and levels without the prior written consent of **WSF**.

B. Operating Plan

1. Sixty (60) days prior commencement of **WSF'S** peak season operating schedule, and sixty (60) days prior commencement of **WSF'S** non-peak season operating schedule, the **CONCESSIONAIRE** shall submit to **WSF** a proposed operating plan to include its proposed services and hours of operation for the upcoming **WSF** sailing season. **WSF** may approve the plan as submitted, or seek agreement on adjustments thereto.
2. At the same time as submittal of its seasonal operating plan, the **CONCESSIONAIRE** shall present, on a prospective basis, its plan for a one (1) year period following the end of the operating season under review.
3. The **CONCESSIONAIRE** shall develop all seasonal and long range operating plans at its sole expense.
4. If the parties cannot agree on a seasonal or long-range operating plan, **WSF** may direct the **CONCESSIONAIRE** to implement an alternative plan affecting service hours, products, services and/or prices. If the **CONCESSIONAIRE** is unable or unwilling to comply with such direction, **WSF** may immediately terminate the **CONCESSIONAIRE'S** rights to the specific concession service under review. Thereafter, **WSF** may contract with a third party for alternative food and beverage service at the affected service location(s), if **WSF** deems appropriate for its customer service. In such event, **WSF** shall not be liable to the **CONCESSIONAIRE** for any damages

whatsoever, and the concession fees payable under this Contract shall be effective for the remaining concession services under this Contract.

C. Marketing Plan

Sixty (60) days prior commencement of **WSF'S** peak season operating schedule, and sixty (60) days prior commencement of **WSF'S** non-peak season operating schedule, the **CONCESSIONAIRE** shall submit to **WSF** a proposed marketing plan, to include a promotions calendar and seasonal marketing concepts. **WSF** may approve the plan as submitted or seek agreement on adjustments thereto. At the same time, the **CONCESSIONAIRE** shall present, on a prospective basis, its marketing plan for a one (1) year period following the end of the operating season under review. The **CONCESSIONAIRE** shall develop all such seasonal and long range marketing plans at its sole expense.

**VIII.
IMPROVEMENTS TO PREMISES**

A. The CONCESSIONAIRE shall:

1. Be responsible for the construction of all capital improvements, furniture and fixtures necessary to bring all Concession Premises and facilities into a fully operable condition.
2. Upon **WSF's** request and / or approval, make capital improvements to the Concession Premises. The capital improvements are defined in Paragraphs B and C of this Article, and shall become **WSF's** property upon installation.
3. Obtain **WSF'S** approval of proposed modifications to the Concession Premises prior to initial design and construction, and thereafter make no alterations without **WSF's** prior, written approval. All such alterations shall become part of the Concession Premises, and shall become **WSF's** property upon the expiration or earlier termination of this Contract unless otherwise provided in a written agreement between the parties. Design and finish materials for all capital improvements must be pre-approved by **WSF**.

- 1 4. Be responsible for the procurement, installation and maintenance of
2 improvements (including equipment, fixtures and furnishings) to the
3 Concession Premises, except any improvements which **WSF** has previously or
4 hereafter agreed, in writing, to provide, install and/or maintain. In purchasing
5 such improvements or operating inventory, the **CONCESSIONAIRE** shall
6 not use the name or credit of **WSF**.
7
- 8 5. Annually, on a mutually agreeable schedule, submit to **WSF** a complete
9 written inventory of all improvements made to the Concession Premises
10 during the preceding calendar or fiscal year. **WSF** shall have the right to tag
11 its property for inventory purposes.
12
- 13 B. The capital improvements described herein include, but are not limited to: food
14 service and other concession equipment; furnishings and decor items; remodeling
15 (structural, electrical, plumbing, etc., including any necessary code compliance
16 work); signage; and any other improvements approved in advance by **WSF**.
17
- 18 C. The capital improvements described herein do not include the cost of: (i) operating or
19 other inventory (e.g., cash registers, utensils, smallwares, tools, expendable
20 equipment), except as otherwise approved by **WSF**; and (iii) personal property of the
21 **CONCESSIONAIRE** which is removable without causing damage to the
22 Concession Premises or any other **WSF** property or facilities thereon, and which the
23 **CONCESSIONAIRE** is entitled to remove under Article XXX.A.2. herein.
24
- 25 D. All facilities on the Concession Premises must be designed to meet all local, state,
26 and federal building code requirements, including the Americans with Disabilities
27 Act standards.
28
29

IX.
PERSONNEL

A. The **CONCESSIONAIRE** shall:

1. Provide adequate personnel to staff the concession facilities so as to rapidly service waiting customers. Such personnel shall: (i) remain the employees of the **CONCESSIONAIRE** only; and/or (ii) be subject to the **CONCESSIONAIRE'S** exclusive supervision, direction and control.
2. Ensure that its concession personnel provide courteous and efficient service at all times. Such personnel shall conduct themselves in a proper manner at all times while on the Concession Premises or other **WSF** property, with a high regard for their own safety and for the comfort and safety of all others on such Premises or property.
3. Ensure that its employees, while on duty, wear clean, neatly pressed attire appropriate for the services provided. The **CONCESSIONAIRE** shall submit the color and design of employee uniforms to **WSF** for prior approval. The cost of such uniforms, including laundering, shall be the sole responsibility of the **CONCESSIONAIRE** and/or its employees.

B. **WSF** reserves the right to approve, in advance, the suitability of all **CONCESSIONAIRE** management personnel assigned to the concession operations under this Contract. The **CONCESSIONAIRE** shall notify **WSF** in advance of the transfer of any on-site management personnel assigned to this Contract.

C. Safety and security are a primary concern on **WSF** vessels, at its terminals and in the vehicle holding areas. With the increased emphasis being placed on security by our nation, **WSF** has established safety and security procedures and expects that security measures and attendant procedures in particular will change over the term of this Contract. These changes may affect the **CONCESSIONAIRE'S** operations and employees. **WSF** will make reasonable efforts to minimize negative business impacts to the **CONCESSIONAIRE** when possible. Some specific considerations include:

1. **WSF** training is meant to augment, not supplant, the **CONCESSIONAIRE'S** own efforts in training and maintaining proper safety and emergency procedures for its employees.
2. To the extent that any federal, state or local rule or regulation requires safety or security training for the **CONCESSIONAIRE'S** employees, the **CONCESSIONAIRE** shall be solely responsible for securing such training and the costs related thereto.

X.

MAINTENANCE AND REPAIRS

A. The CONCESSIONAIRE shall:

1. Maintain all Concession Premises and operating equipment in a clean and sanitary condition to **WSF's** satisfaction.
2. Continuously pick up and dispose of all paper, trash, garbage, and other waste resulting from its operations, and make arrangements for prompt and sanitary disposal of all such waste. Until disposal, all waste shall be stored in sealed containers procured by the **CONCESSIONAIRE** and located on the Concession Premises or an alternate location approved by **WSF**. The **CONCESSIONAIRE** shall not dump any waste into Puget Sound or adjacent waters under any circumstances.
3. Be responsible for a proportional share of the cost of: (i) dumpster procurement, repair and replacement; and (ii) scheduled pick-up / disposal services for such dumpsters, at all **WSF** terminals, unless otherwise agreed to between **WSF** and the **CONCESSIONAIRE**. Proportional share shall be based upon the estimated quantity of trash, garbage and other waste deposited in the dumpsters by authorized users.

4. Be solely responsible for maintenance and repairs to the Concession Premises and restaurant or other facilities thereon, including, but not limited to, exterior and interior glass windows, doors and other glass installations, partitions, equipment, fixtures, floor coverings, ceiling tiles, furnishings, signs, lighting, plumbing, heating and air conditioning. Promptly carry out such work so as to: (i) keep the Concession Premises and facilities thereon in good order and repair; and (ii) minimize any adverse affect on Terminal patron safety. This provision does not apply to any maintenance or repairs that **WSF** has previously or hereafter agreed to, in writing, to be responsible for.
 5. Maintain the Concession Premises landscaping, if any, in as neat and clean condition as possible.
 6. To the maximum extent possible, keep walkways immediately adjacent to the Concession Premises free of snow and ice so as to minimize any adverse affect on Terminal patron safety.
 7. Maintain and repair all terminal Concession Premises and operating equipment in accordance with: (i) applicable building codes, Health Department regulations and other applicable rules and regulations; and (ii) instructions issued by authorized **WSF** personnel. Prior to conducting any maintenance or repair to the terminal Concession Premises, contact the Terminal Agent on duty and obtain written permission to proceed. Upon completion, obtain review and approval by **WSF**.
 8. Immediately carry out all written requests by authorized **WSF** personnel to correct **CONCESSIONAIRE** deficiencies in safety or sanitation. Such deficiencies not immediately remedied may be corrected by **WSF** at the expense of the **CONCESSIONAIRE**.
- B. **WSF** will not tolerate any condition on the Concession Premises that has an adverse effect on personal safety. Accordingly, the **CONCESSIONAIRE** shall be solely responsible for the prompt maintenance and repair of everything on the Concession Premises to the satisfaction of **WSF**.

XI.
UTILITIES

A. Terminal Buildings

The **CONCESSIONAIRE** shall be solely responsible for furnishing and maintaining all utility systems to to serve the Concession Premises developed in existing **WSF** buildings (e.g., the Colman Dock terminal)., including but not limited to: water, electricity, heating and air conditioning, telephone lines, garbage service and any other desired utility service.

WSF shall not be liable whatsoever for any interruption of utility service, if any, that **WSF** may provide in a main feeder line prior to a separate connector line (with meter) to the Concession Premises.

B. Kiosks / Carts

The **CONCESSIONAIRE** shall be solely responsible for furnishing and maintaining all utility systems serving any / all food and beverage kiosks or carts in the vehicle holding areas at **WSF** terminals, as may be authorized by **WSF**.

C. The **CONCESSIONAIRE'S** utility usage shall be limited to that necessary to perform the provisions of this Contract. Any changes that may be required in any utility system provided to the Concession Premises to fulfill the purpose of this Contract and provide the services required herein must be approved in advance by **WSF**.

D. The **CONCESSIONAIRE** shall maintain all utility connections to the Concession Premises and, to the maximum extent possible, keep the utility systems free of obstructions and damage resulting from the **CONCESSIONAIRE'S** operations.

XII.
ENTRY FOR INSPECTION

- A. The **CONCESSIONAIRE** shall permit any duly authorized **WSF** personnel or consultants, or any duly authorized federal, state or municipal officer to enter onto the Concession Premises at all reasonable times, and without prior notice, for: (i) inspection of the Premises for operations, safety or sanitation; (ii) maintenance, repair or construction work; (iii) response to fire or other emergency; and (iv) conducting service / performance audits and verification of Contract compliance.
- B. **WSF** shall not be liable for any claim for loss, damage, inconvenience or interruption of business arising from any of the above-referenced inspection activities. Further, the right of inspection reserved hereunder shall impose no obligation on **WSF** to make inspections and shall impose no liability upon **WSF** for failure to do so.

XIII.
SIGNS AND ADVERTISING

- A. The **CONCESSIONAIRE** shall be required to install concession identification signs and notices (electrical or otherwise) on the exterior of the Concession Premises; **Provided**, such signs must be appropriately designed for the location; and **Provided further**, the **CONCESSIONAIRE** shall not install any sign, menu board or notice without obtaining **WSF'S** prior approval as to its design, message and location. Installations at any other terminal locations shall be within **WSF'S** sole discretion.
- B. No promotion or trade stimulation materials of any kind, including but not limited to any brochure, map, flyer, sign or insignia, shall be displayed, distributed or placed upon the Concession Premises without **WSF'S** prior approval.
- C. The **CONCESSIONAIRE** will benefit from any signage that **WSF** may approve for placement on the soffit / canopy above the sidewalk along Alaskan Way, on the east side of the Concession Premises. As such, the **CONCESSIONAIRE** shall be solely responsible for the payment of any / all city, county or local fees, annual or otherwise, associated with such soffit / canopy.

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XIV.
ACCESS TO PREMISES

- A. Subject to the conditions specified herein, the **CONCESSIONAIRE** shall have unrestricted access to the Concession Premises as necessary to fulfill the terms of this Contract; **Provided**, such rights shall not be exercised in such manner and to such extent as to: (i) impede or interfere with the operation of **WSF** terminals and vessels or business conducted by other **WSF** concessionaires or authorized occupants; or (ii) violate any lease or agreement entered into between **WSF** and a third party.
- B. Subject to: (i) availability of parking, and (ii) the prior approval of the appropriate Terminal Agent, **WSF** shall permit the **CONCESSIONAIRE'S** service vehicles to park free at **WSF** terminals, but only for the minimum time necessary for the **CONCESSIONAIRE'S** delivery / pick-up of products and supplies for its concession operations, or maintenance or repair of the Concession Premises.

XV.
VESSEL PASSES AND PARKING

- A. **Vessel Passes**
- In the performance of this Contract, there are no passes authorized for free vehicle or walk-on passage on any **WSF** vessel. This policy applies to the **CONCESSIONAIRE'S** employees and supervisory personnel working at any of the Concession Premises, regardless of location.
- B. **Parking**
- Generally, there is no parking at any **WSF** terminal for **CONCESSIONAIRE** personnel. However, subject to space availability and demonstrated need, **WSF** may authorize the **CONCESSIONAIRE'S** service vehicles to park free at Colman Dock or any other authorized Terminal, during renovation, maintenance or repair of the Concession Premises, or delivery / pick-up of supplies for the concession facility thereon.

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XVI.
PROTECTION OF PROPERTY AND SAFETY

A. The **CONCESSIONAIRE** shall:

1. At its sole expense, provide protection for its own property at all times, including inventory, fixtures, and equipment. **WSF** shall have no responsibility for protection of the **CONCESSIONAIRE'S** property, or any liability for loss or theft thereof.
2. At no time permit any fire hazards to exist in regard to wiring of the concession facilities and equipment, or through the accumulation of waste or refuse on or adjacent to the Concession Premises; and immediately report to **WSF** fires or unsafe conditions on the Concession Premises.
3. At no time permit liquids or other substances of a slippery or dangerous nature arising from its operations to accumulate anywhere such substances might result in accident or injury to the **CONCESSIONAIRE'S** or the **WSF'S** patrons and/or employees. Should **WSF** desire that the **CONCESSIONAIRE** use only **WSF** specified brands cleaning supplies and cleaning agents, **WSF** shall assume the liability for the appropriateness of each supply item or cleaning agent for its intended use.
4. Inspect and maintain the Concession Premises to prevent loss or damage to **WSF** or other non-**CONCESSIONAIRE** property, or accident or injury arising from the **CONCESSIONAIRE'S** operations. If any intentional or negligent defacement or damage of **WSF** property is caused by the **CONCESSIONAIRE**, its employees or subcontractors, the cost of repair shall be the sole responsibility of the **CONCESSIONAIRE**.

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XVII.
DAMAGE TO PREMISES

A. If, during the Contract term, the Concession Premises or any **WSF** terminal of which the Concession Premises are a part is damaged by fire or other casualty not occurring through the **CONCESSIONAIRE'S** performance of this Contract, and if such damage is repairable within a reasonable time and at a reasonable cost, **WSF** and the **CONCESSIONAIRE** shall repair such damage to their respective property, with due diligence, and this Contract shall not be affected thereby.

B. If, during the Contract term, the Concession Premises or any **WSF** terminal of which the Concession Premises are a part is damaged by fire or other casualty not occurring through the **CONCESSIONAIRE'S** performance of this Contract, and if such damage is so extensive that it cannot be repaired within a reasonable time and at a reasonable cost, **WSF** shall have the option to terminate this Contract as to the Concession Premises at such damaged terminal upon thirty (30) days' prior written notice, effective as of a date not more than sixty (60) days after the occurrence. If **WSF** shall fail to timely notify the **CONCESSIONAIRE** of its election, then, unless the parties agree otherwise, this Contract shall automatically terminate as to such Concession Premises sixty (60) days after the occurrence of the damage.

In the event of such termination, with or without notice: (i) the **CONCESSIONAIRE** shall immediately surrender the subject Concession Premises to **WSF**; (ii) **WSF** shall have no liability to the **CONCESSIONAIRE** for any lost profits or interruption / loss of business resulting from such termination; and (iii) this Contract shall remain in full force and effect as to the remainder of the Concession Premises.

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2 **XVIII.**

3 **CHANGES TO PREMISES AND VESSEL SERVICE**
4

5 **A. Changes to Concession Premises**

- 6 1. **WSF** has a primary obligation to operate the **WSF** for the benefit of its
7 customers and their vehicles. In order to accomplish this obligation, it may be
8 necessary for **WSF**, at some time or times during the term hereof, to make
9 changes in the Concession Premises. If and when such changes become
10 necessary, the parties will mutually cooperate in implementing such changes
11 in order to minimize any disruption in **WSF** or **CONCESSIONAIRE**
12 operations.
13
14 2. **WSF** shall not be liable for any **CONCESSIONAIRE** loss, damage,
15 inconvenience or interruption of business, anticipatory lost profits or
16 consequential damages arising from: (i) changes to the Concession Premises
17 as deemed necessary by **WSF**; (ii) asbestos removal at any **WSF** terminal;
18 (iii) the remodel or refurbishment of any ferry terminal; (iv) any proposed
19 removal of the Burlington Northern railroad tracks adjacent to Alaskan Way;
20 and/or (v) any other improvements / renovations whether or not they are
21 associated with **WSF** actions.
22

23 **B. Changes in Vessel and Routes**

- 24 1. In the event **WSF** is prevented from maintaining its vessel sailing schedules or
25 providing operational Concession Premises due to strike, riot, weather, vessel
26 break-down or repair, security measures, or any other causes whatsoever,
27 **WSF** shall not be liable for any damage, loss or increase in operating cost
28 sustained by the **CONCESSIONAIRE** by reason thereof. **WSF** also reserves
29 the right, without liability for any damage, loss or increase in operating cost,
30 to discontinue, increase or reduce the operation of its terminals and vessels at
31 any time or times as it may see fit. **WSF** may also substitute another vessel or
32 vessels in place of any one or more of its vessels on any route.
33

- 1
- 2 2. **WSF** will use reasonable best efforts to promptly notify the
- 3 **CONCESSIONAIRE** of any such changes in terminal and/or vessel
- 4 operations. Despite any and all such changes in service and possible lack of
- 5 notice to the **CONCESSIONAIRE**, the **CONCESSIONAIRE** shall remain
- 6 obligated to provide the concession services defined herein to the extent that it
- 7 remains possible to do so.
- 8

9 **C. Future Capital Projects**

10

11 1. **Colman Dock –Pier 52 Ferry Terminal**

12 The Colman Dock – Pier 52 Ferry Terminal is scheduled for replacement

13 within the next ten (10) years. Currently, construction is planned to start

14 during the 2007-2009 Biennium with completion scheduled during the 2011-

15 2013 Biennium. The planning is in a preliminary stage and these dates

16 represent the earliest start and completion dates for a complex project with

17 significant regulatory and environmental requirements.

18

19 During construction, the Terminal will not close but there may be disruptions.

20 **WSF** will make reasonable efforts to keep concessions in operation during the

21 construction period, minimize negative business impacts on the

22 **CONCESSIONAIRE** when reasonably possible, and provide comparable

23 locations in the new facility when construction is completed. In the event that

24 **WSF** determines the Concession Contract must be terminated to allow for the

25 construction activity, **WSF** will reimburse the **CONCESSIONAIRE** for the

26 unamortized asset value of agreed initial capital improvements (i.e.,

27 constructed or installed during first Contract year), amortized on a straight-

28 line basis over the full Contract term.

29

2. **Alaskan Way Viaduct**

The Alaska Way Viaduct, an elevated highway, borders the Colman Dock Terminal to the east. The Viaduct is slated for replacement to begin within the period of this Contract. This is a very complex project in the early stages of planning and with many uncertainties. The Colman Dock Ferry Terminal will remain in operation throughout any construction period but the surrounding area could be subject to construction zone conditions.

WSF will not be liable to the **CONCESSIONAIRE** for any damages whatsoever arising from any disruption in customer access or reduced revenues resulting from the Alaskan Way Viaduct project.

3. **Anacortes Ferry Terminal**

The Anacortes Ferry Terminal is scheduled for replacement within the next ten (10) years. Currently, construction is planned to start during the 2007-2008 Biennium. The planning is in a preliminary stage and these dates represent the earliest start dates for a complex project with significant regulatory and environmental requirements. An expanded retail concession presence is planned for the new facility.

During construction, the Terminal will not close but there may be disruptions. **WSF** will make reasonable efforts to keep concessions in operation during any construction period, minimize negative business impacts on the **CONCESSIONAIRE** when reasonably possible, and provide comparable locations in the new facility when construction is completed. In the event that **WSF** determines the Concession Contract must be terminated to allow for the construction activity, **WSF** will reimburse the **CONCESSIONAIRE** for the unamortized asset value of agreed initial capital improvements (i.e., constructed or installed during first Contract year), amortized on a straight-line basis over the full Contract term.

XIX.
ASSIGNMENT, SUB-CONTRACT

A. General

Notwithstanding the provisions of Paragraph B of this Article, the **CONCESSIONAIRE** shall not assign, delegate or transfer this Contract, or the obligations incurred hereunder, in whole or in part, by operation of law or otherwise, or sub-contract for the management or operation of the concession facilities authorized herein, or parts thereof, without **WSF's** prior written approval. Such approval shall not operate to relieve the **CONCESSIONAIRE** of any of its duties and obligations hereunder, unless specified by **WSF** in writing; nor shall such approval affect any remedies available to **WSF** that may arise from non-performance of the Contract.

B. Subsidiary or Licensee

Notwithstanding the restrictions in Paragraph A above, the **CONCESSIONAIRE** may, without **WSF** approval, sublease or assign this Contract to a fully owned subsidiary or licensee of the **CONCESSIONAIRE**. In such event, the **CONCESSIONAIRE** shall remain liable for: (i) the payment of all concession fees in accordance with the concession fee schedule specified in Article XXIV herein; and (ii) the performance of all terms, covenants and conditions of this Contract.

C. Subcontracted Services

If **WSF** authorizes the **CONCESSIONAIRE** to subcontract any concession services under this Contract, the **CONCESSIONAIRE** and the subcontractor shall abide by the applicable service provisions in the RFP and this Contract. The subcontractor shall indicate such willingness in writing. For all subcontracted services, the **CONCESSIONAIRE** shall pay **WSF** the same concession fees applicable to non-subcontracted services, in accordance with the concession fee schedule specified in Article XXIV herein.

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2 **D. M/WBE Participation**

3 This Contract has voluntary goals for participation by Minority Business Enterprises
4 (MBE's) and Women's Business Enterprises (WBE's) in the purchase of products,
5 supplies and/or services. The goals are voluntary, but achievement of the goals is
6 encouraged. The participation goals are as follows:

- 7 1. Ten percent (10%) to State-certified MBEs, based upon the
8 **CONCESSIONAIRE'S** annual expense for the procurement of products,
9 supplies and/or services; and
10 2. Six percent (6%) to State-certified WBEs, based upon the
11 **CONCESSIONAIRE'S** annual expense for the procurement of products,
12 supplies and/or services.
13

14 **WSF** shall monitor the **CONCESSIONAIRE'S** compliance with the MBE and WBE
15 goals to ascertain level of achievement and demonstrated good faith effort.
16

17
18 **XX.**

19 **TAXES AND ASSESSMENTS**
20

21 A. The **CONCESSIONAIRE** shall be liable for, and shall pay throughout the term of
22 this Contract: (i) all taxes (e.g., sales tax) payable for or on account of the retail sales
23 generated under this Contract; (ii) all taxes (including personal property tax, B & O
24 tax, leasehold tax and any other such taxes), assessments and license fees, if any,
25 payable for or on account of the **CONCESSIONAIRE'S** use and occupancy of the
26 Concession Premises; (iii) all taxes on the **CONCESSIONAIRE'S** equipment
27 installed on **WSF** property pursuant to this Contract; and (iv) any taxes levied on, or
28 measured by, the concession fees payable hereunder.
29

30 B. The **CONCESSIONAIRE** shall reimburse **WSF** for all such taxes paid or payable by
31 **WSF**. With respect to any tax on the concession fee payments hereunder, the
32 **CONCESSIONAIRE** shall pay to **WSF** with each fee payment an amount equal to
33 such tax on that particular payment. All other tax amounts for which **WSF** is or will
34 be entitled to reimbursement from the **CONCESSIONAIRE** shall be payable by the

CONCESSIONAIRE to **WSF** at least fifteen (15) calendar days prior to the due dates of the respective tax amounts involved.

C. Notwithstanding the foregoing, the **CONCESSIONAIRE** shall have the right to challenge any levied taxes or assessments relating to the services provided pursuant to this Contract.

XXI.

CONTRACT SECURITY

A. The **CONCESSIONAIRE**, at its own expense, shall deliver to **WSF** and maintain in good standing throughout the term of this Contract, and for sixty (60) days thereafter, Contract Security in the form of a surety Contract Bond or an Irrevocable Letter of Credit (ILOC) in the amount of One Hundred Thousand Dollars (\$100,000) covering the **CONCESSIONAIRE'S** performance and payment obligations under this Contract, and issued by a State-approved, properly licensed surety company or bank, respectively, on a form acceptable to **WSF**.

B. Notwithstanding such Contract Security, the **CONCESSIONAIRE** shall not be relieved of, and shall reimburse **WSF** for, any loss or additional expense incurred by **WSF** as a result of the **CONCESSIONAIRE'S** default or failure to satisfactorily perform the terms of this Contract, including a sum for reasonable attorney's fees if litigation shall be instituted hereon and **WSF** prevails in such litigation or on appeal.

C. If the **CONCESSIONAIRE** substantiates to the satisfaction of **WSF** that the Contract Bond or ILOC required herein is unattainable or is less comprehensive than alternate security proposed by the **CONCESSIONAIRE**, **WSF** may, in its sole discretion, authorize the **CONCESSIONAIRE** to procure and maintain substitute security acceptable to **WSF**.

XXII.
INSURANCE

A. At its sole expense, the **CONCESSIONAIRE** shall procure the insurance required under "Types of Insurance" in this Article. Such insurance shall cover injury to persons and/or property suffered by **WSF** or a third party, as a result of performance of the Contract by the **CONCESSIONAIRE** or by any subcontractor. This coverage shall also provide protection against injuries to all employees of the **CONCESSIONAIRE** and the employees of any subcontractor. The required insurance shall be provided by companies or through sources approved by the Washington State Insurance Commissioner pursuant to Chapter 48.05 RCW.

B. Evidence of insurance shall be furnished to **WSF** prior to execution of the Contract. Such evidence, executed by the carrier's representative and issued to **WSF**, shall consist of an ACORD form Certificates of Insurance evidencing the minimum insurance coverages required under this Article. Acceptance by **WSF** of deficient evidence does not constitute a waiver of Contract requirements.

C. **Types of Insurance**

1. Commercial General Liability Insurance written under ISO form CG0001, or its equivalent, with minimum limits of \$2,000,000 each occurrence and \$4,000,000 in the aggregate for each policy year. Products and completed operations coverage shall be provided for a period of one (1) year following expiration or earlier termination of the Contract.

The Commercial General Liability insurance shall include coverage for the performance of all concession services under the Contract. Such insurance shall cover all operations by, or on behalf of, the **CONCESSIONAIRE** including all operations by a subcontractor. Such insurance shall cover: bodily injury and property damage liability, including coverage for premises and operations; products and completed operations; contractual liability; broad form property damage, including property in the **CONCESSIONAIRE'S** care, custody and control; and personal injury

liability. **WSF** shall be named as an additional insured in connection with the **CONCESSIONAIRE'S** performance of the Contract.

2. Commercial Automobile Liability Insurance providing bodily injury and property damage liability coverage for all owned and non-owned vehicles assigned to or used in the performance of the Contract, for a combined single limit of not less than \$1,000,000 each occurrence. **WSF** shall be named as an additional insured in connection with the **CONCESSIONAIRE'S** performance of the Contract.

3. Worker's Compensation Insurance for the **CONCESSIONAIRE'S** employees engaged in performance of the Contract, as required by State law. The Contractor shall be responsible for Workers' Compensation Insurance for any subcontractor who provides services under the Contract.

4. United States Longshore and Harbor Workers' (U.S. L&H) Insurance and contingent coverage for Jones Act (Marine Employers Liability) in compliance with Federal Statutes, as applicable.

D. All insurance policies and Certificates of Insurance shall include a requirement providing for a minimum of 45 days' prior written notice to **WSF** of any cancellation or reduction of coverage.

E. The **CONCESSIONAIRE'S** failure to maintain the insurance as required shall constitute a material breach of Contract upon which **WSF** may, after giving five (5) working days' notice to the **CONCESSIONAIRE** to correct the breach, immediately terminate the Contract or, at its discretion, procure or renew such insurance and pay any and all premiums in connection therewith, with any sums so expended to be repaid to **WSF** on demand.

F. Upon written request from **WSF**, following a claim that may result in the **CONCESSIONAIRE'S** indemnification obligation, the **CONCESSIONAIRE** shall provide to **WSF** copies of the policies required under this Article within five (5) working days after the request.

1 G. If the **CONCESSIONAIRE** has not fully complied with the insurance requirements
2 in this Article, **WSF** may take any action available to it under any other provisions of
3 the Contract, or as otherwise provided in law.

4
5 H. The insurance coverage and other requirements in this Article shall not limit the
6 **CONCESSIONAIRE'S** responsibilities under this Contract including, but not
7 limited to, duties of liability and indemnity.

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10 **XXIII.**
11 **INDEMNIFICATION**
12

13 A. At its own expense, the **CONCESSIONAIRE** hereby agrees to indemnify and hold
14 harmless **WSF**, , its, officers, agents, employees and assigns , from and against all
15 claims, demands, losses, costs, penalties, damages, judgments and suits at law or in
16 equity, of whatsoever nature ("actions"), brought against **WSF** arising from, in
17 connection with, or incident to the performance of, or failure to perform, the
18 provisions of this Contract by the **CONCESSIONAIRE**, its officers, agents,
19 employees or assigns. The **CONCESSIONAIRE** further agrees to defend **WSF** in
20 any litigation, including payment of any costs or attorney's fees, for any claims or
21 action commenced thereon arising out of or in connection with such acts or activities
22 authorized by this Agreement.

23
24 This indemnity obligation shall not include such claims, costs, damages or expenses
25 that may be caused by the sole negligence of **WSF**. Additionally, if the claims or
26 damages are caused by or result from the concurrent negligence of (a) the
27 **CONCESSIONAIRE**, its officers, agents, employees or assigns and (b) **WSF**, its
28 officers, agents, employees or assigns, and involve those actions covered by RCW
29 4.24.115, this indemnity provision shall be valid and enforceable only to the extent of
30 the negligence of the **CONCESSIONAIRE** or that of its officers, agents, employees
31 or assigns.
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2 **XXIV.**
3 **PAYMENT**
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5 In exchange for the concession rights granted herein, the **CONCESSIONAIRE** agrees to
6 abide by the following payment provisions during the term of this Contract:
7

8 **A. Concession Fees**
9

- 10 1. For each full or partial calendar month of this Contract, the
11 **CONCESSIONAIRE** shall pay to **WSF** a concession fee equal to
12 _____ **Percent (____%) of all gross sales** for the Fast Food service
13 under this Contract.
14
- 15 2. The minimum monthly concession fee for Fast Food shall be the greater of:
16 (i) nine percent (9%) of gross sales, excluding sales tax; or \$ 8,000 unless the
17 **CONCESSIONAIRE** proposes and **WSF** accepts a higher concession fee.
18 Effective at the beginning of year three of the Contract Term, the minimum
19 monthly Concession Fee shall be the greater of nine percent (9%) of gross
20 sales, excluding sales tax, or eighty percent (80%) of the average monthly
21 Concession Fees of the two (2) previous years.
22
- 23 3. For concessions at **WSF** Terminals that require facility construction, the
24 concession fee obligation will commence on the scheduled date for
25 commencement of the concession operations, as agreed to in advance by **WSF**
26 and the **CONCESSIONAIRE**.
27
- 28 4. The term “gross sales” as used herein shall mean the total dollar amount of
29 sales made with respect to the **CONCESSIONAIRE’S** operations conducted
30 in or from the Concession Premises, whether such activities shall be operated
31 by the **CONCESSIONAIRE** or by any subcontractor , or under any other
32 arrangement authorized by **WSF**, excluding, however, any sales or excise
33 taxes which are chargeable against the customer by the **CONCESSIONAIRE**
34 or by the subcontractor, if any, and further excluding refunds. Such gross
35 sales shall include all sales, whether at retail or otherwise, cash or credit,
36 irrespective of whether or not credit accounts are collected.
37

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2 **B. Other Service Contracts**

3 During the term of this Contract, **WSF** intends to implement other concession
4 services under separate contracts outside the scope of this Contract. Such services
5 may include:

- 6 1. on-board food, beverage and retail service;
 - 7 2. on-shore food and beverage service;
 - 8 3. on-shore news, book and convenience stores;
 - 9 4. on-board and on-shore cold beverage vending service;
 - 10 5. on-board and on-shore hot beverage and snack vending service;
 - 11 6. on-board and on-shore game vending machines; and
 - 12 7. other on-board and/or on-shore retail services.
- 13

14 In the event **WSF** implements any or all of these other concession services, **WSF** will
15 not consider any reduction in concession fees under this Contract.
16

17 **C. Due Date**

18 For each calendar month of this Contract, the **CONCESSIONAIRE** shall pay all
19 funds owed to **WSF** no later than the fifteenth (15th) calendar day of the following
20 month, addressing such payment to: Revenue Accountant, Washington State Ferries,
21 P.O. Box 3985, Seattle, Washington 98124-3985. Checks should be made payable to
22 Washington State Ferries, and each payment shall be accompanied by a financial
23 statement pursuant to Article XXV.
24

25 At some time during the term of this Contract, **WSF** may, in its sole discretion,
26 authorize the use of wire transfer or other method of electronic payment, if allowed
27 by the **WSF** accounting system.
28

29 **D. Interest**

30 The **CONCESSIONAIRE** shall pay interest monthly at the annual rate of twelve
31 percent (12%), or the maximum rate permitted by applicable law, whichever is less,
32 on all sums owing to **WSF** under this Contract, commencing on the date the same is
33 first due and payable.
34
35

**XXV.
REPORTS**

- A. The **CONCESSIONAIRE** shall prepare and submit to **WSF**: (i) a monthly financial statement signed by the CFO or Controller, in the form and format specified by **WSF** including detail and sequence of items, to be submitted with the monthly concession fee; (ii) reports of operating statistics as requested by **WSF**; and (iii) reports of any subcontractors operating under the Contract. All such reports shall be available to **WSF** in electronic format.

**XXVI.
ACCOUNTING PROCEDURES**

- A. The **CONCESSIONAIRE** shall adopt bookkeeping or accounting methods that will, in the opinion of **WSF**, comply with generally accepted accounting principles and accurately disclose the **CONCESSIONAIRE'S** income and operating costs under this Contract. If requested by **WSF**, the **CONCESSIONAIRE**, at its sole expense, shall provide **WSF** an external certified public accountant's audit report on all of the **CONCESSIONAIRE'S** concession services provided during the preceding Contract year or the **CONCESSIONAIRE'S** most recent fiscal year.
- B. The **CONCESSIONAIRE** shall make available for inspection all of its concession operation books, accounts and records as may be reasonably required for audit purposes. Such records shall be made available to **WSF** in Seattle for inspection and audit at all reasonable times during the term of this Contract and for three (3) years after final payment hereunder; **Provided**, if any litigation, claim or audit is started before expiration of this three (3) year period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved. The **CONCESSIONAIRE** shall also permit **WSF** to check receipts from the **CONCESSIONAIRE'S** cash registers during such period.
- C. If at any time during the Contract term **WSF** requests reasonable changes in format, type or detail of accounting data, the **CONCESSIONAIRE** shall make the requested adjustments at no cost to **WSF**.

XXVII.
NON-DISCRIMINATION

A. Customers

Subject to applicable laws or regulations, the **CONCESSIONAIRE** agrees that no person, on the grounds of race, color, creed, national origin, marital status, age, sex, or the presence of any sensory, mental or physical handicap shall be denied the benefits of, or be otherwise unlawfully subjected to discrimination in their access to and use of the vending equipment on the Concession Premises.

B. Title VI

During the performance of this Contract, the **CONCESSIONAIRE**, for itself, its assignees and successors in interest, agrees as follows:

1. Compliance With Regulations

The **CONCESSIONAIRE** shall comply with the Regulations relative to nondiscrimination in federally assisted programs of the U.S. Department of Transportation (hereinafter referred to as USDOT), Title 49, Code of Federal Regulations, part 21, as they may be amended from time to time, (hereinafter referred to as the Regulations), which are herein incorporated by reference and made a part of this Contract.

2. Nondiscrimination

The **CONCESSIONAIRE**, with regard to the work performed by it during the Contract, shall not discriminate on the grounds of race, color, sex, or national origin in the selection and retention of subcontractors, including procurement of materials and leases of equipment. The **CONCESSIONAIRE** shall not participate either directly or indirectly in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the Contract covers a program set forth in Appendix B of the Regulations.

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2 3. Solicitations for Subcontracts, Including Procurement of Materials and
3 Equipment

4 In all solicitations either by competitive bidding or negotiations made by the
5 **CONCESSIONAIRE** for work to be performed under a subcontract,
6 including procurement of materials or leases of equipment, each potential
7 subcontractor or supplier shall be notified by the **CONCESSIONAIRE** of the
8 **CONCESSIONAIRE'S** obligations under this Contract and the Regulations
9 relative to nondiscrimination on the ground of race, color, sex, or national
10 origin.

11 4. Information and Reports

12 The **CONCESSIONAIRE** shall provide all information and reports required
13 by the Regulations or directives issued pursuant thereto, and shall permit
14 access to its books, records, accounts, other sources of information, and its
15 facilities as may be determined by the Washington State Department of
16 Transportation or the USDOT to be pertinent to ascertain compliance with
17 such Regulations, orders and instructions. Where any information required of
18 the **CONCESSIONAIRE** is in the exclusive possession of another who fails
19 or refuses to furnish this information, the **CONCESSIONAIRE** shall so
20 certify to the Washington State Department of Transportation, or the USDOT,
21 as appropriate, and shall set forth what efforts it has made to obtain the
22 information.

23 5. Sanctions for Noncompliance

24 In the event of the **CONCESSIONAIRE'S** noncompliance with the
25 nondiscrimination provisions of this Contract, the Washington State
26 Department of Transportation shall impose such Contract sanctions as it or the
27 USDOT may determine to be appropriate, including, but not limited to:

- 28
- 29 a. Imposition of fines or other financial remedies under the
30 Contract until the **CONCESSIONAIRE** complies, and/or;
- 31 b. Cancellation, termination, or suspension of the Contract, in
32 whole or in part.

1 6. Incorporation of Provisions

2 The **CONCESSIONAIRE** shall include the provisions of paragraphs 1
3 through 5 in every subcontract, including procurement of materials and leases
4 of equipment, unless exempt by the Regulations, or directives issued pursuant
5 thereto.

6 The **CONCESSIONAIRE** shall take such action with respect to any
7 subcontractor or procurement as the Washington State Department of
8 Transportation or the USDOT may direct as a means of enforcing such
9 provisions including sanctions for noncompliance; Provided, however, that in
10 the event the **CONCESSIONAIRE** becomes involved in, or is threatened
11 with, litigation with a subcontractor or supplier as a result of such direction,
12 the **CONCESSIONAIRE** may request the Washington State Department of
13 Transportation to enter into such litigation to protect the interests of the state
14 and, in addition, the **CONCESSIONAIRE** may request the United States to
15 enter into such litigation to protect the interests of the United States.

16
17 D. The **CONCESSIONAIRE** shall use the Concession Premises in compliance with all
18 other requirements imposed pursuant to any federal, state or municipal laws or
19 regulations on discrimination.

20
21 E. The breach of any of the above non-discrimination covenants shall be a material act
22 of default entitling **WSF** to terminate this Contract in accordance with the procedures
23 set forth herein.

1
2 **XXVIII.**
3 **DISPUTES**
4

5 **A. Administrative Review**

6 **WSF** and the **CONCESSIONAIRE** shall make a good faith effort to resolve any
7 dispute arising under this Contract. Any such dispute which is not resolved by
8 agreement between the parties shall be submitted in writing to **WSF's** Director / CEO
9 for administrative review. After giving full consideration to both parties' positions,
10 the Director / CEO shall issue a written, reasoned decision and mail or otherwise
11 furnish a copy thereof to both parties. The decision of the Director / CEO shall be
12 final and conclusive subject to the provisions in Paragraph B below. Pending the
13 administrative decision of a dispute hereunder, the **CONCESSIONAIRE** shall
14 proceed diligently with the performance of this Contract.
15

16 This administrative review process is an express condition precedent to the institution
17 of mediation pursuant to Paragraph B below.
18

19 **B. Mediation**

20 If either **WSF** or the **CONCESSIONAIRE** wishes to appeal an administrative
21 decision issued pursuant to Paragraph A above, it may not bring any claim against the
22 other party unless the claim is first presented for non-binding mediation before a
23 single mediator under the applicable Mediation Rules of the American Arbitration
24 Association. A representative of **WSF** and a representative of the
25 **CONCESSIONAIRE**, both having full authority to settle the claim, must attend the
26 mediation session. This provision requiring pre-filing mediation shall be
27 incorporated by reference in all agreements between the **CONCESSIONAIRE** and
28 its sub-contractors and suppliers. To the extent that any of the sub-contractors or
29 suppliers has any interest in the claim, their representatives, with full authority to
30 settle a claim on their behalf, shall also attend the mediation session.
31

32 Mediation is an express condition precedent to the institution of a claim on any
33 dispute arising under this Contract.
34

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2 **C. Standard of Review**

3 On an appeal of any dispute resolution pursuant to Paragraph A above, **WSF** and the
4 **CONCESSIONAIRE** agree that the standard of review shall be whether the
5 administrative decision was arbitrary and capricious.
6
7

8 **XXIX.**

9 **FINES AND TERMINATION**
10

11 **A. Fines For Non-performance**

12 **WSF** may impose on the **CONCESSIONAIRE** fines not to exceed One Thousand
13 Dollars (\$1,000.00) per violation per day (for each location where the violation
14 occurred), for the **CONCESSIONAIRE'S** or its subcontractor's failure to take
15 corrective action on a material breach of this Contract. Before any such fine may be
16 assessed, **WSF** shall issue a written notice to the **CONCESSIONAIRE**, specifying
17 the exact nature of the breach, the corrective action to be taken, and a reasonable
18 period of time in which to respond and complete such action. If the
19 **CONCESSIONAIRE** does not fully comply with the notice, without reasonable
20 justification, then **WSF** shall issue a written fine, payable with the next monthly
21 concession fee.
22

23 There shall be no limitation on the number and frequency of such fines, including
24 subsequent, cumulative fines for the same breach, if not timely corrected. All such
25 breaches which are not timely corrected shall be sufficient cause, singularly and
26 cumulatively, for default termination of this Contract, if deemed necessary by **WSF**.
27 Any such fine shall not be a prerequisite to, nor shall it affect, any other available
28 remedy arising from the **CONCESSIONAIRE'S** breach of this Contract.
29
30

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2 **B. Termination for Default**

3
4 1. Notice of Default

5 **WSF**, by prior written notice, may terminate this Contract, in whole or in part,
6 for failure of the **CONCESSIONAIRE** to perform any material provision of
7 this Contract. Such notice shall specify the default(s) then outstanding, and
8 shall provide advance notice equal to the longer of: (i) fourteen (14) calendar
9 days; or (ii) a period of time determined by **WSF** as reasonably necessary to
10 remedy the default(s). **WSF'S** acceptance of **CONCESSIONAIRE'S**
11 payment or services for any period or periods after a default by the
12 **CONCESSIONAIRE** hereunder shall not be deemed a waiver of such default
13 unless **WSF** shall so intend and shall so advise the **CONCESSIONAIRE** in
14 writing. No waiver by **WSF** of any **CONCESSIONAIRE** default hereunder
15 shall be construed to be or act as a waiver of any subsequent default by the
16 **CONCESSIONAIRE**.

17
18 2. Termination and Extension

19 After the expiration of the default notice period, if one or more of the defaults
20 described in such notice then remains unremedied, this Contract shall
21 terminate without further notice and all rights of the **CONCESSIONAIRE**
22 shall cease. **WSF** may, in writing and at its option, extend the above period if,
23 in the sole judgment of **WSF**, an extension is justified.
24

25 3. Assignment for Benefit of Creditors, Insolvency, or Bankruptcy

26 To the extent permissible by law, appointment of a receiver to take possession
27 of the **CONCESSIONAIRE'S** assets, the **CONCESSIONAIRE'S**
28 assignment for benefit of creditors, or the **CONCESSIONAIRE'S** insolvency
29 or taking or suffering action under any Bankruptcy Act is a breach of this
30 Contract entitling **WSF** to terminate this Contract in accordance with the
31 provisions herein.
32

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2 4. Performance by WSF

3 Notwithstanding the provisions in Paragraph B.1, if the **CONCESSIONAIRE**
4 defaults in the performance of any material provision of this Contract, and if
5 **WSF** deems that an emergency exists as a direct result of such default, **WSF**
6 may: (i) immediately terminate this Contract, in whole or in part, effective
7 upon the **CONCESSIONAIRE'S** receipt of written notice thereof; and (ii)
8 perform or cause to be performed such Contract provision(s). In such case,
9 **WSF** shall not be liable for damages by reason of such termination or entry
10 onto the Concession Premises. **WSF** may also avail itself of any other remedy
11 provided by law. Emergencies hereunder include, but are not limited to:
12 endangerment of life or property; failure to timely obtain insurance or
13 Contract Security, or failure to pay any taxes required by this Contract.
14

15 5. Damages

16 In the event **WSF** terminates this Contract, in whole or in part, for failure of
17 the **CONCESSIONAIRE** to perform a material provision herein, the
18 **CONCESSIONAIRE** shall be liable for Contract payments owed **WSF** to the
19 effective date of termination, plus **WSF'S** damages and expenses, including
20 but not limited to the additional cost, if any, of substitute, comparable
21 services, and the reduced revenues, if any, to **WSF**.
22
23

24 **XXX.**

25 **REDELIVERY OF PREMISES**

26
27 A. Upon the expiration or earlier termination of this Contract, the **CONCESSIONAIRE**
28 shall:
29

- 30 1. Immediately quit and surrender the Concession Premises and any other **WSF**
31 property in a systematic and orderly manner and redeliver such Premises and
32 property to **WSF** in as good state and condition as they were at the
33 commencement of the **CONCESSIONAIRE'S** operations under this
34 Contract, except for: (i) ordinary wear and tear; and (ii) damage not caused,
35 in whole or in part, by the **CONCESSIONAIRE'S** operations under this
36 Contract.

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2. Unless otherwise agreed upon between the parties, remove from the Concession Premises the **CONCESSIONAIRE'S** personal property that is removable without causing damage to the Concession Premises or any other **WSF** property or facilities thereon. Title to any such items left on the Concession Premises after ten (10) days following expiration or earlier termination of this Contract shall pass automatically to **WSF**; **Provided**, this provision shall not apply to any of the **CONCESSIONAIRE'S** personal property which **WSF** may allow to remain on the Concession Premises pending sale to a successor concessionaire; but if such sale is not completed within reasonable time, or upon earlier notice from **WSF**, the **CONCESSIONAIRE** shall immediately remove all such personal property from the Concession Premises and restore such Premises, as necessary.
3. Remain fully liable for (ii) all clean-up resulting from the close-out activities specified in this Article; and (ii) the cost of restoring the Concession Premises and any other **WSF** property to the condition specified in Paragraph A.1.

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XXXI.
NOTICE AND APPROVAL

Whenever notice is required to be given under this Contract, it shall be sent, facsimilied, or delivered in writing to the following respective addresses:

WSF: Washington State Ferries
2911 Second Ave.
Seattle, Washington 98121-1012

Attn.: Brian Volkert
Business Development Manager

CONCESSIONAIRE: _____

Attn.: _____

or to such other respective addresses as either party may hereafter designate in writing. Notice sent by mail shall be deemed to have been given three (3) days after proper mailing, and the postmark affixed by the U.S. Post Office shall be conclusive evidence of the date of mailing. Approvals, where required by this Contract, shall be effective in the same manner.

XXXII.
SEVERABILITY

If any term or provision of this Contract or the application thereof to any person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Contract, or the application of such term or provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby and shall continue in full force and effect.

1
2 **XXXIII.**
3 **GOVERNING LAW**
4

5 This Contract shall be deemed to be made in the County of Thurston, State of Washington,
6 and the legal rights and obligations of **WSF** and the **CONCESSIONAIRE** shall be
7 determined in accordance with the laws of the State of Washington. All legal actions in
8 connection with this Contract shall be brought in the County of Thurston, State of
9 Washington.

10
11
12 **XXXIV.**
13 **ENTIRE AGREEMENT**
14

15 A. This Contract, together with all attachments hereto, constitutes the entire agreement
16 between the parties. There are no terms, obligations, covenants or conditions other
17 than those contained herein. No modification or amendment of this Contract shall be
18 valid and effective unless evidenced by an agreement in writing.

19
20 B. To the extent that there is a conflict between this Contract, the
21 **CONCESSIONAIRE'S** Financial Proposal, its Concept / Service Proposal and/or the
22 project RFP package, the provisions of the respective documents shall govern in the
23 following order:
24

- 25 1. This Contract, together with any attachments;
- 26 2. The project RFP package;
- 27 3. The **CONCESSIONAIRE'S** Financial Proposal; and
- 28 4. The **CONCESSIONAIRE'S** Concept / Service Proposal
- 29
- 30

1
2 **IN WITNESS WHEREOF**, the parties hereto have executed this Concession
3 Contract as of the day and year first written above.
4

5
6 **WASHINGTON STATE FERRIES**
7 **Washington State Department of Transportation**
8

9
10 BY: _____
11 Mike Thorne
12 Director / CEO
13
14

15
16 **CONCESSIONAIRE'S NAME**
17

18
19 BY: _____
20 Name
21 Title
22
23
24

25
26 Approved as to Form for WSF:
27

28 BY: _____
29 Andrew Scott
30 Assistant Attorney General
31

32 DATE: _____
33
34

STATE OF _____)
)
COUNTY OF _____) ss

On this day personally appeared before me _____, to me known to be the _____, acting on behalf of _____ the corporation that executed the within and foregoing instrument, and acknowledged the said instrument to be the free and voluntary act and deed of said corporation for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN UNDER my hand and official seal this _____ day of _____, 2003.

NOTARY PUBLIC in and for the State of
_____, residing at _____.

My Commission Expires: _____

STATE OF WASHINGTON)
)
COUNTY OF KING) ss

On this day personally appeared before me **Michael G. Thorne**, to me known to be the Director / CEO of **WASHINGTON STATE FERRIES**, a division of the Washington State Department of Transportation, the agency that executed the within and foregoing instrument, and acknowledged the said instrument to be a free and voluntary act and deed of said agency for the uses and purposes therein mentioned, and on oath stated that he was authorized to execute the said instrument.

GIVEN UNDER my hand and official seal this _____ day of _____, 2003.

NOTARY PUBLIC in and for the State of
Washington, residing at _____.

My Commission Expires: _____

WASHINGTON STATE FERRIES
ON-SHORE FOOD AND BEVERAGE
CONCESSION CONTRACT

CONTRACT EXHIBITS

<u>Exhibit</u>	<u>Title</u>
A	CONCESSIONAIRE's Financial Proposal (incorporated by reference)
B.	CONCESSIONAIRE's Concept / Service Proposal (incorporated by reference)
C	WSF's Request For Proposals (incorporated by reference)